

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.1816 OF 1999

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

-
1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

BHATIA THAKER MOHANLAL CHATRABHUJ
VERSUS
SHRI GURJAR KSHATRIYA KANYA SHALA TRUST & ORS.

Appearance:

MR NV ANJARIA for petitioner
MR MEHUL SHAH for respondent No.3

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 23/03/2000

C.A.V. JUDGMENT

#. This civil revision application is directed by the plaintiff No.1 in the Regular Civil Suit No.91 of 1970

against the order of the Civil Judge (S.D.), Anjar Kutchh, dated 14.10.99 below ex.177 under which that application came to be dismissed. This application was filed by plaintiff No.1 on 18.3.96 wherein prayer has been made that respondent No.3 has wrongfully been impleaded as plaintiff and that she may be transposed as defendant in the suit.

#. The facts of the case in brief are that the plaintiff No.1 instituted Regular Civil Suit No.91 of 1970 on 16.9.70 for redemption of mortgage of suit property against the trustees of the Gurjar Kshatriya Kanya Shala Trust at Anjar. The suit property consisted of shop situated at Nandvana Chowk comprising of two rooms and an Otta in the front. The suit was originally instituted by plaintiff No.1 through his Power of Attorney Holder Shri Dheneshwar Popat. Later on, the plaintiff No.1 has cancelled the Power of Attorney which he executed in favour of Shri Dheneshwar Popat. The wife of Shri Dheneshwar Popat, Smt.Manharbai, the respondent No.3 herein, filed Regular Civil Suit No.4 of 1975 for specific performance of agreement to sell of right of redemption alleged to be executed by the plaintiff No.1 in her favour. The respondent No.3, on 15.1.75, filed an application under Order 1, Rule 10 of the Code of Civil Procedure below ex.92 in Regular Civil Suit No.91 of 1970 for impleading her as a party to the suit on the ground that there is an agreement to sell of right of redemption in her favour dated 27.7.70 by plaintiff No.1. That application was resisted by plaintiff No.1. The learned trial court under its order dated 16th October, 1982, rejected her application. The respondent No.3, against this order of the learned trial court, preferred civil revision application No.310 of 1983 before this court and it was allowed on 23rd October, 1985 and respondent No.3 was ordered to be joined as a party in the suit. After decision of this court in the revision application, it is case of the petitioner that respondent No.3 requested the court to join her as plaintiff No.2 and accordingly she was joined. On 18th March 1986, this application ex.177 was submitted urging that respondent No.3 could not have been joined as co-plaintiff as they are having conflicting interest. Prayer has also been made for deletion of name of respondent No.3 as plaintiff and be transposed as defendant. This application was rejected under the impugned order. Hence this civil revision application.

#. The learned counsel for the petitioner contended that the respondent No.3 could not have been impleaded as co-plaintiff in the suit as they are having conflicting

interest. Mr.Anjaria contends that the alleged agreement to sell of right of redemption is not an admitted document. The respondent No.3 has already filed her suit for enforcement of that agreement to sell of right of redemption and she could not have been impleaded as plaintiff in this case. He further submits that this court has not ordered for impleadment of this respondent No.3 as co-plaintiff in the suit. All that is submitted by Mr.Anjaria is that she may be transposed as defendant.

#. Mr.Mehul Shah, learned counsel for respondent No.3 vehemently contended that in case respondent No.3 is deleted as plaintiff and she is transposed as defendant in the suit, it will result in irreparable injury to her. Her suit will become infructuous and her this claim of sale of right of redemption will also become ineffective. Carrying this contention further, Ms.Shah submits that the suit for redemption has been filed by petitioner-plaintiff No.1 way back in 1970. Now he has colluded with the mortgagee and he has already applied for withdrawal of the suit. In case this suit is withdrawn, then limitation of filing the fresh suit for redemption of mortgage will not be there and in case ultimately the respondent No.3 succeeds in her suit, it will only a paper decree to be mounted in a frame and to be placed on wall in drawing room. It has next been contended that having this apprehension she has filed this application for her impleadment in the suit and this apprehension was found to be meritorious and this court has permitted her impleadment in the suit. As a defendant, she cannot oppose withdrawal of the suit and as a result of which now she will be rendered remediless and the plaintiff-petitioner will succeed in his oblique motives as he has joined hands with mortgagee and taken money and he is making an attempt to defraud respondent No.3 also.

#. I find from the record of this civil revision application that respondent No.3 filed an application for her impleadment in the suit filed by plaintiff No.1-petitioner as she was having apprehension of withdrawal of the suit by him. She is asserting her rights in the property on the basis of agreement to sell of the right of redemption which was executed by plaintiff No.1-petitioner in her favour. It is true that the plaintiff No.1-petitioner is not admitting this agreement to sell the right of redemption but it is a matter to be decided in the suit filed by respondent No.3. An attempt is made and in fact application is already filed for withdrawal of the suit of redemption of mortgage. I find sufficient merits in the contention of

the learned counsel for respondent No.3 that in case her name is deleted as plaintiff and transposed as defendant in the suit for redemption of mortgage, then the plaintiff No.1-petitioner will succeed in his oblique motives and the suit filed by respondent No.3 will become redundant and infructuous. The mortgage is of the year earlier to 1970. The limitation for redemption of mortgage is 30 years under the Limitation Act, 1963. After dismissal of the suit, the respondent No.3, even if she succeeds in her suit of specific performance for agreement to sell of right of redemption, it will be only a paper decree. She cannot file the suit for the reasons, (i) that it may be barred by provision of Order 2, Rule 2, Civil Procedure Code, 1908, and (ii) that it is beyond limitation. If this is permitted to be achieved by plaintiff No.1-petitioner, they he will not only render her suit infructuous but also the order of this court in civil revision application of respondent No.3 under which she was ordered to be impleaded as a party to the suit. The order of the learned trial court is just and reasonable to which no exception can be made. In the facts of the case rightly, the respondent No.3 was impleaded a plaintiff No.2 in the suit. It is true that so long as the agreement is not proved, she may not be able to get the decree but converse is also equally very serious. If the suit is permitted to be withdrawn then in the eventuality of her success in the suit for specific performance of agreement to sell of right of redemption, she will not get anything. The learned trial court has not committed any error, much less a material irregularity in exercise of its jurisdiction in passing the impugned order which calls for interference of this court under Section 115 of the Civil Procedure Code, 1908. Otherwise also, in view of the order of this court passed in earlier civil revision application filed by respondent No.3, the purpose of her impleadment as plaintiff No.2 was that the suit may not be withdrawn as a result of which her suit may become infructuous.

#. In the result, this revision application fails and the same is dismissed. The proceedings of the Regular Civil Suit No.91 of 1970 in the Court of Civil Judge (J.D.) Anjar, Kutchh, shall remain stayed till decision of the Regular Civil Suit No.4 of 1975. The learned trial court is directed to dispose of the Regular Civil Suit No.4 of 1975 within a period of four months from the date of receipt of Writ of this order. After decision of the suit, the court below will take up forthwith for hearing the suit out of which this civil revision application arises. Rule is discharged. No order as to costs.

.....

(sunil)